GAHC030002892025

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J)/30/2025

Sh. Lalsangzela
S/o Lalrosiama
R/o Ngur Village
Champhai District

VERSUS

The State of Mizoram and Anr.
Aizawl2:Sh. PK. Thang

BEFORE

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Advocate for the appellant : Ms. Emily L. Chhangte, Legal Aid Counsel

Advocate for the respondents : Ms.Linda L. Fambawl, PP (R-1)
Mr. C. Tlanthianghlima, Legal Aid Counsel for R-2

Date on which judgment is reserved : 12.06.2026

Date of pronouncement of judgment : 16/06/2026

Whether the pronouncement is of the operative part of the judgment? : No

Whether the full judgment has been pronounced ? : Yes

JUDGMENT & ORDER (CAV)

(M. Zothankhuma, J)

We have heard Ms. Emily L. Chhangte, learned Legal Aid Counsel for the appellant; Ms. Linda L. Fambawl, learned Public Prosecutor, Mizoram for respondent No. 1 and Mr. C. Tlanthianghlima, learned Legal Aid Counsel for respondent No. 2.

2. This is an appeal against the impugned Judgment & Order dated 12.11.2018 passed by the Judge, Special Court (POCSO), Champhai in SC No. 57/2017 A/o Criminal Trial No. 500/2017, by which the appellant has been convicted under Section 4 of the POCSO Act and sentenced to undergo Rigorous Imprisonment for 18 years with a fine of Rs. 5000/-, i.d. of fine to suffer Simple Imprisonment for 2 (two) months.

3. The prosecution case in brief is that, an FIR dated 02.01.2017 was submitted by PW-1, who was the father of the victim, who stated that on 01.01.2017 at around 10:00 pm while he was asleep inside the house, the appellant had entered his house and raped his 12 year old daughter. Pursuant to the FIR, CPI-PS Case No. 1/2017 dated 02.01.2017 under Section 4 of the POCSO Act was registered by the police. After investigation was completed, charge sheet was submitted by the Investigating Officer (PW-8), on finding a *prima facie* case established against the appellant under Section 4 of the POCSO Act.

4. Charge was submitted against the appellant under Section 4 of the POCSO

Act, to which he pleaded that on the night of the incident, he was intoxicated with liquor and he could not recall what he had done. He further stated that the next morning, he went to the residence of the victim to seek their pardon, but he was told that the FIR had been submitted to the concerned authority for the wrong he had committed during the previous night.

5. The learned Trial Court thereafter examined 7 (seven) prosecution witnesses, i.e. PW-1, PW-2, PW-4, PW-5, PW-6, PW-7 &PW-8 and after examining the appellant under Section 313 Cr.P.C, convicted the appellant under Section 4 of the POCSO Act and sentenced him accordingly.

6. The learned Amicus Curiae submits that the appellant was not given a chance to adduce evidence during his examination under Section 313 Cr.P.C. Further, the younger brothers of the victim were not made prosecution witness and examined by the learned Trial Court and they could have thrown light as to whether the victim had been raped by the appellant, due to the fact that the victim said she was sleeping with her younger brothers when she was raped. Further, the appellant in her Section 161 Cr.P.C statement had stated that they slept on the floor, but in her deposition before the Court the victim had said that she slept in the bedroom of her parents. The learned Amicus Curiae submits that there are several contradictions and inconsistencies in the statement made by the victim and as such, she cannot be treated as a sterling witness.

7. On the other hand, the counsels for the respondents submit that the mother of the victim was an eye witness to the rape of the victim by the appellant. Further, the appellant had sought forgiveness from the parents of the

victim in the morning. Also the statement made by the appellant during the stage of framing of charge, was to the effect that he could not recall what he did on the particular night due to intoxication, proved that there was no plea of alibi available to the appellant against the charge of having committed penetrative sexual assault on the victim. Also, in his examination under Section 313 Cr.P.C., the appellant had admitted that he had gone to the house of the victim on the relevant night after having taken 6 to 7 glasses of liquor along with a friend. The respondents counsels submit that the appellant's father was also at the place of occurrence at the relevant point of time and he had seen the appellant and his friend inside their residence. They accordingly submit that this Court should uphold the impugned Judgment & Order of the learned Trial Court.

8. We have heard the learned counsels for the parties.

9. The evidence of PW-1, who is the father of the victim is to the effect that he identified the appellant standing in the Court. PW-1 stated that on the night of 01.01.2017 at around 10:00 pm while he was sleeping, he was awakened by heated exchange of words inside his residence. On waking up, he noticed the sound was the voice of his wife.He then saw the appellant and his friend Zonumawia were inside his residence. He was informed that the appellant had assaulted the victim sexually. When he enquired from his daughter as to what happened, the victim told him that the appellant had raped her and had pressed his hand against her mouth. However, the appellant fled.On PW1's wife examining the victim, his wife found that there was bleeding in the private parts of the victim. After ten minutes, the appellant came and begged for forgiveness

stating that what he had done was wrong. The next morning he went to the Champhai Police Station and submittedthe FIR.

10. In his cross-examination, PW-1 stated that his victim daughter was born on 26.09.2004. He also stated that he did not hear any screamor cry on that particular night. He also stated that he did not see the appellant raping his daughter, but he saw the appellant's friend, Zonunmawia, sitting inside his residence. Zonunmawia then told him that he was not involved in the incident. PW-1 also informed the VCP and YMA President about the incident but since they did not come to his house on that particular night, they could not take any further action. However, the family then sat on their bed throughout the night.

11. The evidence of PW-2, who is the mother of the victim and wife of PW-1, is to the effect that she identified the appellant who was in the Court. PW-2 stated that on the night of 01.01.2017, at around 10:00 pm while she was sound asleep, she woke up to attend the call of nature. While leaving her bed, she heard her daughter scream. She saw that her daughter was covered with a blanket. However, the size of her blanket was abnormally big. On removing the blanket to enquire why her daughter screamed, she saw the appellant lying on top of her daughter with the zipper of his jeans shorts open. PW-2 then gave three slaps on the back of the appellant and scolded him for sleeping with her daughter in a compromising position. The appellant then replied that he would leave. At the same time Zonunmawia was sitting in the next room. On asking Zonunmawia why he was inside their residence, Zonunmawia replied that they thought PW-2 would need timber to construct a new house and they came to ask her about it. Zonunmawia also told PW-2 that he was not involved in the incident. Her daughter then told PW-2 that she was having pain in her private

parts. As she suspected that the appellant had raped her daughter, she examined the private parts of the victim and found there was bleeding. The incident was informed to the VCP and YMA President by her husband. At around 12:30 midnight, the victim daughter passed urine and on examining the same, PW-2 found blood in the urine of her daughter. At around 2:30 am, her daughter again passed urine and on examining the same, PW-2 then again found blood in her urine. She then told her daughter not to remove her underwear and not to wash it with water as the same could be vital evidence. PW-2 also stated that the parents of the appellant had sent a message with a request to withdraw the FIR and proposed that the appellant and the victim should get married.The same was however declined by PW-2.

12. The evidence of PW-4, who is the seizure witness in respect of the Birth Certificate of the victim, is to the effect that he knew that the victim was born on 26.09.2004 and that the appellant was a drug addict.

13. The evidence of PW-5, who is the seizure witness with regard to the seizure of the Birth Certificate of the victim, is to the effect that the appellant was a drug addict.

14. The evidence of PW-6, i.e., the victim, is to the effect that she knew the appellant, who was standing in the Court. On the night of 01.01.2017 at around 10 PM, while she was sound asleep inside the bedroom of her parents, her mouth was suddenly closed by a hand. While trying to struggle free, her underwear was pulled down by the appellant, who then inserted his private parts into her vagina.As it was paining, PW-6 screamed. Hearing her scream, her mother came and removed the person who was on top of her. The

appellant then ran out of the house and she saw Zonunmawiasitting inside the house. Shortly thereafter, the appellant appeared again in their residence.She also stated that as she was shocked and terrified, her parents comforted her and let her stay on their bed. She also passed urine with blood at around 12:30 midnight and again at around 2:30 am. She also felt pain in her private parts.Her mother also told her not to remove her underwear and not to wash it with water, as the same was vital evidence. The next morning, she went with her parents to Champhai Police Station and an FIR was submitted. She was also sent to the Champhai hospital for medical examination. She also stated that when the appellant returned to their residence, he begged for forgiveness stating that he had committed a wrong act.

15. The evidence of PW-7 who is the doctor who conducted a medical examination on the victim, is to the effect that the victim was physically and mentally normal.There was no sign ofher being influenced with alcohol or drugs. On examination of her genital area, PW-7 found bruise and profitiallacerationinher vagina opening left side. She also found blood stain in the inner surface of the labia majora**.** Her hymen was also not intact. Her vaginal swap was taken for spermatozoa, but no result was received by PW-7.

16. The evidence of PW-8 is to the effect that on 02.01.2017, he was on duty at Champhai Police Station when PW-1 submitted an FIR, to the effect that on 01.01.2017,his daughter was raped by the appellant inside his house, while the victim and the family members were asleep. He being the Investigating Officer, he visited the place of occurrence and examined the victim and her parents. He also seized the Birth Certificate of the victim.

17. PW-8 also stated that PW-2 had told him that on that fateful night, all her family members had gone to bed and the main door of the house was kept unlocked, as the elder sibling of the victim had not come home from the church programme,where church members were singing together in the church, as it was only one day after the new year celebration. While all the others were sound asleep, the appellant entered the house and raped the victim. He also stated that the accused and the victim were sent to the District Hospital, Champhai for medical examination and he arrested the appellant from his residence on 02.01.2017. PW-8 also stated that on interrogating the appellant, the appellant told him that he and his friend had drunk liquor and while being intoxicated, they entered the house of the victim, as the main door was unlocked. While his friend stayed near the fire place, the appellant went into the bedroom of the victim and raped her. He also stated that as per the Birth Certificate of the victim, the victimwas born on 02.09.2004 and at the time of the incident, the victim was 12 years and 8 months.

18. The appellant, during his examination under 313 Cr.PC, admitted that he had entered the house of the victim on 01.01.2017 at about 10 PM. He did not deny the fact that he had run away from the house of the victim and had returned, seeking forgiveness from the parents of the victim. The question and answers of the appellant during his examination under Section 313 Cr.P.C,are reproduced below:-

> "*Q (1). It is evidence that on the night of 1/1/2017 at around 10:00 PM you had committed the offence lurking house trespassed into the house of Mr PK Thanga, Ngur village. Is it correct?*
>
> *Ans:- yes, it is correct.*

Q (2). It is evidence that by that time the victim/prosecutrix was sleeping on the floor near the bed of her parents inside their bedroom. After entering the said house you proceeded to the bedroom. Is it correct?

Ans:- Yes, it is correct.

Q (3). It is evidence that on seeing the victim sleeping alone on the floor, you pulled up her blanket. Then you gagged her mouth with your hand and then committed raped on her. Is it correct?

Ans: No, it is not correct.

Q (4). It is evidence that as a result of the sexual assault, the victim has been detected with hymen torn. Is it correct?

Ans:- No, it is not correct.

Q (5). It is evidence that after you had assaulted the victim, you had been intervened by parents of the victim. You run off the house. But shortly later you returned to the said house and beg for pardon of the parents of the victim. Is it correct?

Ans:- Yes, it is correct.

Q (6). It is evidence that you had begged for pardon due to the offence of sexual assault you committed upon the victim. Is it correct?

Ans:- As soon as I was spotted and interfered by father of the victim, we had heated altercation. The father of the victim tried to stab me. On seeing that, I had no other thing to do but to beg for pardon.

Q (7). Do you have any other thing to say?

Ans:- On that particular night I and my friend namely Zonunmawia had taken about 6-7 glasses of liquor. After being intoxicated, we just took a short round at our village and then decided to see some girls. While we were nearby the house of the present victim we just got inside and further got inside the bedroom. As I was heavily under intoxication of liquor I am not able to recall what I had actually done to the victim on that particular night."

19. As can be seen from the evidence adduced by the prosecution witnesses, the appellant and his friend had entered the house of the victim at around 10 PM on 01.01.2017, on account of the main door being kept unlocked, as the elder sibling of the victim had not returned from her church programme. As per the evidence of the victim, the appellant had committed penetrative sexual assault on the victim in terms of Section 3 of the POCSO Act, 2012, which was punishable under Section 4(2) of the POCSO Act. The appellant was caught lying over the victim under a blanket, with the zipper of his jeans shorts open on that fateful night by the mother of the victim. On being scolded, the appellant had run away. However, he had returned after some time to the house of the victim and prayed for forgiveness from the parents of the victim, by stating that he had committed a wrong act. The appellant penetrated the private parts of the victim with his private parts. There is also evidence that there was bleeding of the private parts of the victim and blood was noticed in the urine of the victim. The Doctor who had examined the victim had also stated that there were blood stain on the labiamajora of the victim. The Doctor has also stated that the hymen of the victim was not intact. There is no denial by the appellant that he was not in the house of the victim at the relevant point of time. He has only denied having raped the victim. However, the evidence of the victim and the mother of the victim, coupled with the medical evidence, proved that the appellant had committed penetrative sexual assault on the victim who was around 12 years old.

20. We do not find anything to doubt the truthfulness of the testimony of the mother or the victim. There is no whisper of there being any enmity between the victim's family and the appellant for the above two persons to have

fabricated a case of rape against the appellant. The Supreme Court in the case of ***Ganesan Vs. State*** reported in ***(2020) 10 SCC 573*** has held that testimony of a child victim of sexual assault, if cogent and confidence inspiring requires no corroboration and that courts must not follow a hyper technical approach, as sexual offences are committed in secrecy and often without witnesses. In the present case, there is an eyewitness to the incident, i.e., PW-2. Further, the evidence of the father of the victim PW-1, who was asked forgiveness by the appellant, also corroborates the testimony of the victim. There is also nothing to suggest that the victim had been tutored by the parents of the victim to make a false case against the appellant.

21. With regard to the alleged inconsistencies and contradictions pertaining to the victim's testimony viz-a-viz her statements under Section 161 Cr.P.C., the appellant should have followed the procedure prescribed in Section 145 of the Evidence Act and Section 162 Cr.P.C. to discredit the victim. However, without confronting the victim in terms of Section 145 of the Indian Evidence Act, 1872 and Section 162 of the Cr.P.C, a witness cannot be discredited. With regard to the contention of the appellant's counsel that the appellant was not given a chance to adduce evidence, we find that the learned Trial Court had given an opportunity to the appellant to adduce defence evidence in terms of Section 243 Cr.P.C. In fact, the Order dated 25.10.2018 issued by the Trial Court during trial states as follows:-

> "*As the accused Lalsangzela declined to lead his defence evidence, the stage for defence evidence is closed. Fixed 08.11.2015 for argument.*"

22. With regard to the stand taken by the appellant's counsel that the

younger brothers of the victim were not examined as witnesses, there is nothing shown by the appellant's counsel that the evidence of the younger brothers of the victim could have thrown any other light, to the effect that the appellant was not guilty of having committed an offense punishable under Section 4 of the POCSO Act. In any effect when the victim herself was only around 12 years, the non-examination of her younger siblings as witnesses, in our opinion, does not cause any prejudice to the appellant, when he has never asked for their appearance as Court witnesses.

23. This Court also finds that minor inconsistencies, cannot be a ground to disbelieve the prosecution case, which does not go to the core of the issue. Further, there is no major inconsistency in the case. In the case of ***Narendra Kumar Vs. State NCT of Delhi***, reported in ***(2012) 7 SCC 171,*** the Supreme Court has held at para 16 as follows:-

> "*16. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for*

evidence, direct or substantial, which may lend assurance to her testimony."

24. In view of the reasons stated above, we do not find any reason to interfere with the conviction and sentence imposed upon the appellant by the learned Trial Court. The appeal is accordingly dismissed.

25. Send back the TCR.

26. In appreciation of the assistance provided by the learned Amicus Curiae and the Legal Aid Counsel for the respondent No. 2, their fee should be paid by the Mizoram State Legal Services Authority.

JUDGE **CHIEF JUSTICE**

Comparing Assistant

Kuntal Datta

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